

# EXHIBIT “A”

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF HAWAII

3  
4 DAVID DEMAREST and GREEN ) CASE NO.  
MOUNTAIN MYCOSYSTEMS LLC, ) 22-CV-000064 JAO KJM

5 )  
6 )  
7 Plaintiffs, )  
8 )

9 vs. )  
10 )  
11 )

12 )  
13 RAIED J. ALFOUADI; UNNAMED )  
14 SAILING VESSEL in rem, Hull )  
15 No. HA 6874 H; DOE DEFENDANTS )  
16 1-20, DOE CORPORATIONS 1-20, )  
17 DOE GOVERNMENT AGENCIES 1-20, )  
18 DOE PARTNERSHIPS 1-20, )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
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Defendants. )  
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14  
15 ZOOM 30(b)(6) DEPOSITION OF STATE OF HAWAII,

16 DEPARTMENT OF LAND AND NATURAL RESOURCES,

17 DIVISION OF BOATING AND OCEAN RECREATION

18  
19 Taken on behalf of the Plaintiffs, DAVID DEMAREST and  
20 GREEN MOUNTAIN MYCOSYSTEMS LLC, at Honolulu, Hawaii,  
21 Commencing at 10:00 a.m., on February 16, 2023,  
22 pursuant to notice.  
23  
24  
25

BEFORE:

SHEILA MOORE, RPR, RMR, CMRS, CRR, CSR No. 501

1 EDWARD R. UNDERWOOD,  
2 Of lawful age, called for examination, being by me  
3 first duly sworn, as hereinafter certified, deposed  
4 and said as follows:

5 EXAMINATION OF EDWARD R. UNDERWOOD

6 BY MR. WASHKOWITZ:

7 Q. Good morning. My name is Jared Washkowitz.  
8 I'm the attorney for the plaintiffs in the pending  
9 case.

10 Could you go ahead and state your full name for  
11 the record?

12 A. Edward R. Underwood.

13 Q. And what's your position with the DLNR?

14 A. I'm the administrator for the division of  
15 boating and ocean recreation.

16 Q. Okay. And how long have you been in that  
17 position?

18 A. I've been with DLNR for 20 years.

19 Q. Okay. What are your job duties in that  
20 position?

21 A. I oversee the state small boat harbor program  
22 which includes the small boat harbors and regulating  
23 offshore activities.

24 Q. All right. And have you ever been deposed  
25 before?

1 Q. Who did you speak to?

2 A. My Lahaina Harbor agent that was involved with  
3 the vessel salvage or grounding.

4 Q. And what was his name?

5 A. Robert Abrew.

6 Q. Okay. And what was the basic substance of your  
7 conversations?

8 A. If he could remember this vessel going aground  
9 and working with this person, and he said yes.

10 Q. Okay. And was there any other discussion about  
11 specifics of what happened, or was it -- was it just  
12 generally do you remember what happened?

13 A. General do you remember what happened, and he  
14 had forwarded us the exhibits that you have as well,  
15 so I reviewed those documents.

16 Q. Okay. And did Mr. Abrew -- Abrow? Abrew?

17 A. A-b-r-e-w.

18 Q. Abrew, okay. Did Mr. Abrew identify anybody  
19 else down in Maui who would have knowledge of the  
20 actual operation that took place?

21 A. No.

22 Q. All right. Did you have any personal  
23 involvement with this salvage operation?

24 A. No.

25 Q. Did you have any knowledge about it

1 independently of what Mr. Abrew reported to you or,  
2 you know, what you gleaned from reviewing the  
3 documents?

4 A. No.

5 Q. All right. And is Mr. Abrew under -- he's with  
6 DLNR, correct?

7 A. Correct.

8 Q. Is he under DOBOR as well?

9 A. Yes.

10 Q. And does DOBOR handle -- what's DOBOR's  
11 involvement when there's, you know, something like  
12 this happens where there's a vessel that runs aground  
13 near shore like what happened in this case? What  
14 typically does -- what's DOBOR's involvement, if any?

15 A. When we receive the report we'll look up the  
16 documented owner or the registrant who's with us, and  
17 then we contact the vessel owner, notifying them their  
18 vessel is aground and that they have 24 hours to  
19 remove it, otherwise, we may need to step in.

20 Q. Okay. And if DOBOR steps in, what does that  
21 mean? That DOBOR takes the lead in salvage operations  
22 in getting the vessel removed?

23 A. Yes.

24 Q. And in that situation who pays for the expense  
25 of that?

1       A.    If we initiate the salvage removal, then we  
2       would pay for that.

3       Q.    And would you seek reimbursement from the owner  
4       for that?

5       A.    Yes.

6       Q.    Okay.  How does DOBOR typically -- I guess you  
7       would contract outside companies to do this salvage or  
8       are there in-house people at DOBOR that do that?

9       A.    We contract it.

10      Q.    Are there -- are there companies in Maui that,  
11      as far as you know, DOBOR has used for this service in  
12      prior instances?

13      A.    Yes.

14      Q.    Can you identify any of those?

15      A.    TNT Towing, if I'm not mistaken, is the name.

16      Q.    Okay.  And they're in Maui?

17      A.    They are in Maui, yes.

18      Q.    To your knowledge has -- has DOBOR ever had any  
19      dealings with the plaintiff in this case David  
20      Demarest or his company Green Mountain Mycosystems  
21      prior to this incident?

22      A.    Not that I'm aware of.

23      Q.    And to the best of your knowledge in this case,  
24      the salvage operation started before -- I mean, was  
25      DOBOR the one that notified the owner first that they

1 had to commence salvage or was -- did the salvor  
2 notify DOBOR of what happened?

3 A. I don't know how that occurred.

4 Q. Okay. All right. And before I get too far  
5 ahead of myself, I did email a bunch of exhibits to  
6 the depo prior to -- I mean, yesterday and this  
7 morning.

8 MR. WASHKOWITZ: So, Sheila, I think you  
9 said you got those. Did you get Exhibits A  
10 through K?

11 (Discussion had off the record.)

12 (Plaintiff's Deposition Exhibit A was  
13 marked for purposes of identification.)

14 BY MR. WASHKOWITZ:

15 Q. Can you guys all see this?

16 A. Yes.

17 Q. Okay. So this is Exhibit A, and I'm just kinda  
18 trying to make a clean record here, but this is  
19 Exhibit A, the amended depo notice; which does say via  
20 Zoom, sorry, Dan.

21 Okay, so, Mr. Underwood, you know, so the depo  
22 notice asked for the DLNR to produce a person most  
23 knowledgeable regarding category 1 right here, facts  
24 and circumstances involving this salvage. I mean, are  
25 you the person that has the most knowledge regarding

1 that, or would you say Mr. Abrew is more knowledgeable  
2 on that because he was more involved?

3 A. I would say Mr. Abrew, because he was there on  
4 island.

5 Q. Okay. And what was his -- do you know from  
6 talking to him what his involvement was? Did he  
7 actually go on site or was his involvement just, like,  
8 discussions with my client and the vessel owner?

9 A. I believe it was discussions with your client  
10 and the person that did the salvage.

11 Q. Okay. As far as you know, did he go on site at  
12 all or, like, actually physically inspect how the  
13 salvage was going at any time?

14 A. I do not know.

15 Q. Okay. And in this category number 2, any and  
16 all potential fines and penalties that the owner of  
17 the vessel incurred or could have incurred as a result  
18 of the wreckage, is that something you can testify to?

19 A. Yes.

20 Q. Okay. Is there -- all right. Now, I guess,  
21 let me ask you this -- and I'd like -- this will be  
22 Exhibit A by the way. We'll just call this Exhibit A.  
23 Can you talk about that? What, you know,  
24 you've reviewed the documents and have an  
25 understanding of where the wreckage was and kinda the



1 circumstances surrounding it, correct?

2 A. Correct.

3 Q. And what kind of potential fines or penalties  
4 would apply in this situation if the wreck had not  
5 been removed?

6 A. I don't believe there would be fines and  
7 penalties. What we would be asking for is  
8 reimbursement of all costs associated with removal of  
9 the vessel.

10 Q. And is that -- that's based on a statutory  
11 section? Is that -- to your knowledge, is that based  
12 on HRS 200-47.5?

13 A. Yes.

14 Q. Okay. So -- whoops, you guys don't need to see  
15 all that.

16 Okay, so -- so your statement, you know, the  
17 fines and penalties would have been costs of removal  
18 of the vessel, but the state didn't incur any costs  
19 because that was handled by my client, correct?

20 A. Yes.

21 Q. What about, you know, stuff like pollutants in  
22 the ocean and damage to the reef; is that something  
23 that your department handles or is that handled  
24 outside of your department?

25 A. The department would handle it, but a different

1 DOBOR in that situation work with these other agencies  
2 and say there's this incident here, we're cleaning it  
3 up, you guys might want to check out whether there was  
4 any damage, you know?

5 Is that something, like, would you work with  
6 the other agencies on that?

7 A. It would be on a case-by-case basis, but, yes.

8 Q. Okay. And do you happen to know what statute  
9 the division of aquatic resources works off of when  
10 determining fines and penalties that might apply?

11 A. I do not, no.

12 Q. Okay. Okay. And as far as the division of  
13 boating and ocean recreation goes, the only things  
14 that that division would seek to recoup is the actual  
15 costs incurred in cleaning up the mess, correct?

16 A. Yes.

17 Q. Is there ever a situation where the division of  
18 boating and ocean recreation would issue a fine or  
19 penalty in this kind of situation, like, you know,  
20 this similar type of situation?

21 A. I don't recall any instance where we would do  
22 that.

23 Q. Okay. So, you know, some of my exhibits are,  
24 like, news articles where other companies were fined  
25 by the DLNR for damaging reef and things like that.

1 Q. Okay. And is this -- the area around the  
2 wharf, do you have any knowledge of whether that's,  
3 you know, if there's reef under there or if it's --  
4 what kind of marine life is around there?

5 A. Yes, there is coral in that area.

6 Q. Okay. Do you have any knowledge as to whether  
7 this area is used as a, you know, for, like,  
8 snorkeling or fishing or any recreational purpose by  
9 locals or visitors?

10 A. It's possible, but most of the activity takes  
11 place on the other side of the wharf.

12 Q. Okay. So the side that this boat is on, in  
13 this picture, which we'll mark as Exhibit C, I guess  
14 that would be the north side?

15 A. Yes, it's adjacent to the launch ramp.

16 Q. Okay.

17 A. Which is right next to it.

18 Q. And then there is -- most of the activities  
19 would be on the opposite side?

20 A. Yes.

21 Q. How close to, you know, do the recreational  
22 activities get to the wharf? Are people snorkeling  
23 right up next to it and around it, or is it a ways  
24 off?

25 A. Yes, they usually -- the beach is right on the

1 other side of the wharf in this picture, and they walk  
2 into the water and they go to the end of the pier.  
3 That's where the snorkeling and scuba diving takes  
4 place.

5 Q. Okay. So let me stop this sharing and I'm  
6 gonna -- I'm gonna pull up another image.

7 (Plaintiff's Deposition Exhibit F was  
8 marked for purposes of identification.)

9 BY MR. WASHKOWITZ:

10 Q. Okay. Can you guys see this one?

11 A. Yes.

12 Q. Okay. So is this -- is this kinda of -- is  
13 this an accurate depiction of the aerial view of the  
14 wharf?

15 A. Yes.

16 Q. All right. And then in the picture we were  
17 just looked at before, it looked like the boat was  
18 kinda like around here where my cursor is, right?

19 A. Yes.

20 Q. And you said most of the activity of snorkeling  
21 and all that stuff happens on this side?

22 A. Yes.

23 Q. So you said that people just walk off the  
24 beach, I guess there's a beach down here close to  
25 where it says Captain Steve's rafting? People come

1 from this beach and just walk out?

2 A. Yes.

3 Q. And then you'll see on this picture kinda right  
4 under the word Mala Historic Wharf, under Mala  
5 there's, like, a bunch of reef you can see.

6 Is that where people are snorkeling and  
7 exploring?

8 A. Yes.

9 Q. Okay. And do you -- do you have knowledge of  
10 exactly where the vessel wreckage was on this map when  
11 it initially happened? Was it on the right side or  
12 the left side?

13 A. I do not know.

14 Q. Okay. All right. On this little triangle here  
15 on the right side, do you see where my cursor is?

16 A. Yes.

17 Q. So I guess it's just, to use words to describe  
18 it, it's, like, to the right of the wharf there's,  
19 like, a little triangle inlet bordered on the right  
20 by, like, a rock jetty kinda thing.

21 But does anybody use this little triangle area  
22 for anything, as far as you know?

23 A. As far as I know, no.

24 Q. Okay. And then the boat launch is right here  
25 where it says blue water?

1 A. Yes.

2 Q. And what's that boat launch called?

3 A. Mala Wharf Launch Ramp.

4 Q. Okay. Is this reef, like, on the left of the  
5 Mala Wharf, is that ever accessed by, like, tour  
6 companies who take people out for snorkeling where  
7 they would, like, anchor and people snorkel here?

8 A. Yes, but it's more towards the end of the Mala  
9 Wharf.

10 Q. Like out where my cursor is?

11 A. Yes.

12 Q. Okay. All right. Let me just check on some  
13 other photos here. Hold on, bear with me for a  
14 second. All right.

15 And that last photo, I don't know if I attached  
16 that as an exhibit, I think I had it listed on my  
17 email as Exhibit F, so we'll just -- can we just call  
18 it Exhibit F, even though it's out of order? Okay,  
19 let's call that Exhibit F.

20 And then this next exhibit is -- I have it  
21 called as Exhibit G.

22 (Plaintiff's Deposition Exhibit G was  
23 marked for purposes of identification.)

24 BY MR. WASHKOWITZ:

25 Q. Okay. You guys can see this?

1 A. Yes.

2 Q. Okay, so this looks like an email between my  
3 client and Russell Sparks.

4 Do you know who Russell Sparks is?

5 A. Yes. He's the marine biologist I believe for  
6 aquatic resources.

7 Q. Okay. So that's the aquatic resources  
8 division?

9 A. Yes.

10 Q. Is he -- who's Kristy Stone?

11 A. I don't know.

12 Q. Okay. Have you seen this email before, or take  
13 a minute to read it first, but have you seen this  
14 email before?

15 A. I saw it this morning as we were heading to  
16 your office.

17 Q. Okay. I highlighted this part here that says  
18 as far as DLNR is concerned the responsible party is  
19 completely responsible for removing the vessel and any  
20 hazards and also for any environmental impacts the  
21 incident caused both from the grounding and/or from  
22 the salvage.

23 Do you disagree with that or have any reason to  
24 disagree with that?

25 A. No.

1 Q. He says we don't normally go after individuals  
2 in unfortunate accidental grounding cases like this.

3 My question to you is, if there's a case where  
4 a grounding is the result of an owner's, like,  
5 negligence, they did something, you know, unlawful, or  
6 that was not reasonable care that caused the  
7 grounding, does that change the determination as to  
8 whether DLNR will pursue fines or penalties? Does  
9 that factor into it at all; do you know?

10 A. It may, but that would be at the discretion of  
11 aquatic resources. We would not be involved.

12 Q. Okay. All right. He also -- I mean, he  
13 referenced -- I think my client had asked him if, you  
14 know, you can see in the -- lower down on this exhibit  
15 and that will be Exhibit G -- and, again, these are  
16 all -- it's not gonna be in order, but that's how I  
17 labeled them so we'll just call it Exhibit G. But  
18 down here you can see that my client asked, you know,  
19 if there's any surveys of the marine life around the  
20 wharf to determine, you know, what -- what that -- if  
21 it's a fragile ecosystem or anything like. And he  
22 referenced him to this website.

23 I didn't realize it was actually linked, but do  
24 you have any idea what this survey that he's referring  
25 to is? He says there's an extensive study done by the



1 knowledge of, you know, community concerns that were  
2 expressed regarding this situation?

3 A. No.

4 Q. Okay. Have you spoken with Russell Sparks at  
5 all about the case?

6 A. No.

7 Q. I mean, you're familiar with that area in  
8 general, correct?

9 A. Yes.

10 Q. And would it -- I mean, does it surprise you at  
11 all or shock your conscience that the community would  
12 be concerned if there's a vessel washed up there?

13 A. No.

14 Q. And why is that?

15 A. The entire area around the Mala Wharf does have  
16 a lot of live rock and coral, so I could see the  
17 community being concerned with the vessel being left  
18 there for any length of time.

19 Q. Okay. Are there situations where the ocean  
20 around the wharf can get unruly, or is it super  
21 protected from swells and wind and stuff like that?

22 A. It gets very rough around the wharf.

23 Q. Okay. And more so in winter than summer, or  
24 does it matter depending on the swell?

25 A. Depending on the swell.

1 quality of the work that was done in handling this  
2 situation by my client?

3 A. No.

4 Q. Have you been made aware that there was any  
5 damage to the reef or surrounding area, or do you not  
6 know?

7 A. I do not know, no.

8 Q. Okay. Have you been contacted by -- as far as  
9 you know, was the Coast Guard in touch with either the  
10 DLNR, any division of the DLNR, regarding this  
11 incident at all?

12 A. I'm not aware if they were or not.

13 Q. And what about the Hawaii Department of Health?

14 A. No.

15 Q. Not aware, or they did not?

16 A. Not aware.

17 Q. Okay. And had the vessel just been left where  
18 it was, how long before DOBOR would have taken action  
19 to remove it itself, or DLNR?

20 A. We're required to wait 24 hours. We would most  
21 likely stepped in right away due to the location of  
22 the vessel.

23 Q. Okay. And do you have, you know -- you have  
24 some experience with this kinda situation happening  
25 before, correct?

1 A. Yes.

2 Q. Have you had experiences where DOBOR has had to  
3 take a lead in removing a vessel of a similar size to  
4 this vessel?

5 A. Yes.

6 Q. Have you ever had -- has DOBOR ever had to do  
7 that in that same location at Mala Wharf?

8 A. I don't recall in the same location. No.

9 Q. Okay. And the location would effect, like, the  
10 circumstances of the operation, how long it takes, and  
11 how difficult it is, correct?

12 A. Correct.

13 Q. Do you -- as we sit here today, are you aware  
14 of DLNR or DOBOR having any issues with how plaintiff  
15 conducted the operation or, you know, the timeliness  
16 of it or anything like that?

17 A. No.

18 Q. You're not aware, or there were no issues?

19 A. I heard no issues being raised.

20 Q. Okay. And has DLNR or DOBOR had any  
21 communications with the vessel owner regarding this  
22 incident, as far as you know?

23 A. I don't know, but they would have contacted the  
24 vessel owner as soon as they got word that a vessel  
25 went aground.

1 Q. Okay. In a situation where, you know, if DOBOR  
2 did have to take the lead in handling the situation,  
3 would -- would DOBOR reach out to the owner's  
4 insurance company and work with the insurance company  
5 to be remunerated for their expenses, or how does that  
6 usually work?

7 A. That is one of the first things we tried to  
8 ascertain, is whether they have insurance or not. And  
9 then we would work with our Deputy Attorney General's  
10 Office on contacting the insurance company, notifying  
11 them they need to pay for this removal.

12 Q. Okay. And in your experience if -- I mean,  
13 have you ever been involved in a situation where  
14 division of aquatic resources has issued a fine or,  
15 you know, penalty related to damage to the  
16 environment?

17 A. I don't recall one, no.

18 Q. Okay. All right. Let me -- I'm gonna defer to  
19 the other counsel to see if they have any follow-up  
20 questions, and while they do that I'll review my notes  
21 to see if I have anything else, but I think that's the  
22 bulk of my questions and I'll just let other counsel  
23 go ahead and then come back.

24 MS. MACDONALD: Sure, I'm gonna have a few  
25 questions.

1 EXAMINATION OF EDWARD UNDERWOOD

2 BY MS. MACDONALD:

3 Q. My name is Erin Macdonald and I represent the  
4 defendant in this case, Raied Alfouadi, and I just  
5 wanted to follow up on a few things that you testified  
6 about earlier.

7 Now, you testified about this 24-hour period  
8 after DOBOR is notified of a vessel aground and the  
9 24-hour wait period before DOBOR will step in.

10 If you have a situation where after that  
11 24-hour period passes the vessel owner is working to  
12 remove the vessel, would DOBOR still step in?

13 A. No.

14 Q. What -- what standard does DOBOR look at for  
15 whether they step in or not?

16 A. We -- as long as the vessel owner is doing what  
17 they can to remove the vessel, and the salvage plan  
18 that they give us isn't gonna damage natural resource  
19 or at least minimize damage, we allow them to remove  
20 their own vessel.

21 Q. What does the salvage plan involve?

22 A. Basically them telling us how they plan on  
23 removing the vessel from the water.

24 Q. How do they tell you? You know, does it have  
25 to be in writing? Can it be just speaking to an agent

1 through the state for their expenses?

2 A. Not that I'm aware of.

3 Q. Okay. Is there a public adjuster with the  
4 state who addresses the expenses of vessel removal?

5 A. Not that I'm aware of.

6 Q. And in this case, is there -- sorry, let me  
7 restart.

8 In this case is it possible there was a salvage  
9 plan beyond what was documented in the written emails?

10 A. It's possible, but I am not aware of it.

11 Q. Okay, but it could be the agent and the harbor  
12 discussing with the people who are working on the  
13 salvage?

14 A. Yes.

15 Q. And that wouldn't necessarily then be  
16 documented, correct?

17 A. May not, correct.

18 Q. I think I wanted to ask you a few follow-up  
19 questions about Exhibit C.

20 MS. MACDONALD: Jared, would you be able  
21 to share that? I can try, but I think it'll take  
22 me a lot longer than you.

23 MR. WASHKOWITZ: Yes, I will. Exhibit C?

24 MS. MACDONALD: Yes, Exhibit C, if you can  
25 put it on the screen.

1 BY MS. MACDONALD:

2 Q. All right, Mr. Underwood, can you see the  
3 photo?

4 A. Yes.

5 Q. Okay. I believe you testified earlier that  
6 there is coral in the area shown in the photograph; is  
7 that accurate?

8 A. Yes.

9 Q. Is there coral in the area specifically where  
10 the boat is in that photograph?

11 A. I don't know.

12 Q. Okay. And you testified earlier that when  
13 people snorkel in the Mala reef area, they're  
14 snorkeling on the opposite side of the pier from where  
15 the boat is in this photograph, correct?

16 A. Yes.

17 Q. And you testified they go to the end of the  
18 pier to snorkel, and I just wanted to clarify -- I'm  
19 sorry -- is that correct, they go to the end of the  
20 pier to snorkel?

21 A. Yes.

22 Q. I wanted to clarify then as we're looking at  
23 this photograph, are you talking they go all the way  
24 down to the end of this wharf, the farthest into the  
25 ocean side of this wharf before they snorkel?